

**§ 4.261 Anti-lapse provisions.**

(a) This section applies when:

(1) An Indian testator devises or bequeaths trust property to any of his or her grandparents or to the lineal descendant of a grandparent; and

(2) The beneficiary dies before the testator leaving lineal descendants.

(b) The lineal descendants referred to in paragraph (a)(2) of this section take the right, title, or interest so given by the will per stirpes.

(c) Relationship by adoption is equivalent to relationship by blood.

**§ 4.262 Felonious taking of testator's life.**

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, may take directly or indirectly any devise or bequest under deceased's will. All right, title, and interest existing in such a situation will vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

**CUSTODY AND DISTRIBUTION OF ESTATES**

SOURCE: 70 FR 11822, Mar. 9, 2005, unless otherwise noted.

**§ 4.270 Custody and control of trust estates.**

(a) The Superintendent may:

(1) Assume custody or control of all tangible trust personal property of a deceased Indian; and

(2) Take such action, including sale of the property, as in his or her judgment is necessary for the benefit of the estate, the heirs, and the beneficiaries, pending entry of the decision provided for in §§ 4.214, 4.240, 4.241, or 4.312.

(b) All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from:

(1) Those funds of the deceased that are under the Department's control; or

(2) The proceeds of a sale of the property or a part thereof.

(c) If a deciding official has been assigned to adjudicate the estate, his or her approval is required before payment can be made under paragraph (b)(2) of this section.

**§ 4.271 Omitted property.**

(a) This section applies when, after issuance of a decision under §§ 4.214, 4.240, or 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory.

(1) The inventory can be modified to include the omitted property for distribution under the original decision.

(2) Modification may be made either administratively by BIA or by a modification order prepared by him or her for the approval and signature of a deciding official.

(3) Copies of all modifications must be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, BIA must notify the deciding official, who will proceed to hold an informal or formal hearing if necessary and issue a decision under §§ 4.214 or 4.240. The record of any such proceeding must be lodged with the designated LTRO under § 4.236(b).

**§ 4.272 Improperly included property.**

(a) When, after a decision under §§ 4.214, 4.240, or 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the agency where the property is located, or by any interested party.

(b) An administrative law judge or Indian probate judge will review the record of the title upon which the modification is to be based and enter an appropriate decision. If the decision is entered without a formal hearing, the administrative law judge or Indian probate judge must give notice of his or her action to all parties whose rights are adversely affected, allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate, the administrative law judge or Indian probate judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled